

Rumsey Indian Rancheria

YOCHA-DE-HE

October 30, 2008

*Rumsey Band of
Wintun Indians*

Archaeological Resources Committee
California State Historic Preservation Office
1416 9th Street, Room 1442
Sacramento, CA 95814
Re: Comments on Position Papers

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To Whom It May Concern:

To participate in the larger federal historic preservation program and receive financial support from the Historic Preservation Fund, the State of California is required to adopt a Historic Preservation Plan for California. California's current version of its State plan entitled, "Forging a Future with a Past: Comprehensive Statewide Historic Preservation Plan for California," is scheduled for an update on a five-year cycle. While we are pleased that the Archaeological Resources Committee ("Committee") of the State Historical Resources Commission ("SHRC") has begun to address the updated 2006-2010 plan, specifically, its best practice standards for the practice of California archaeology, we have a few comments and concerns regarding the current "Position Papers" as outlined in the following comments below.

We understand the purpose of the "Position Papers" is to develop and provide guidance to the Office of Historic Preservation as they complete this update and the preservation community in general as they work to identify, register, protect, and preserve important historic resources and cultural heritage. Since the "Position Papers" only present broad ideas and concepts which later will be built upon to provide specific goals and recommendations for the Plan, our comments are also presented as broad policy statements reflecting concerns we saw in each of the five "Position Papers" as designated below.

CURATION, by Cindy Stankowski, M.A.:

The normal difficulties of working with excavated archaeological resources are compounded with sensitive cultural and spiritual issues for California Indians. In attempting to address these problems, comprehensive inclusion of the concerns of Native people and comprehensive knowledge of curation methods are both needed, and must be pursued as extensively as possible within the limits time and space.

Current practices are insensitive to the cultural and religious significance of sacred objects. Stewards over many collections have begun responding to the

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demands from cultural groups for increased attention to the spiritual needs of sacred objects. Traditional care or indigenous curation describes the care, treatment, and handling of sacred or religious objects in the manner prescribed by the culture for which the object has ritual significance. Anthropologists have been concerned with collecting, curating, and preserving people's material culture but have not been interested in learning about how these objects might be curated from other perspectives. While some believe the trend jeopardizes the further development of professional methods and standardization, most acknowledge the value of indigenous curatorial traditions. Such recognition opens up possibilities for the exchange of information, knowledge, and expertise. The point is to give credence to bodies of knowledge and practices that have been historically overlooked or ignored.

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We recommend merging traditional indigenous curation methods with more modern techniques. Specifically, we recommend that alternative methods of curation based on cultural context and protocol be explored and adopted. For example, the "Indigenous curation," methods are intended to protect both the material and spiritual integrity of objects, reflecting a particular community's religious and cultural protocol regarding the use and treatment of certain kinds of objects. Recognition of indigenous curation in the form of the co-curation of collections and exhibitions is becoming commonplace internationally and is adopted by certain United Nations Educational, Scientific and Cultural Organization (UNESCO) agencies, such the ICOM, an International convention committed to the conservation, continuation, and communication to society of the world's natural and cultural heritage.

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CONSERVATION, by Susan M. Hector, Ph. D., RPA:

We recommend collaborative partnerships and programs that concentrate on developing an integrated management approach to the conservation of archeological sites as traditional places of cultural significance that acknowledge and respond to past identities and present-day needs and expectations.

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In recent years, the National Park Service has begun to expand upon the essential mission to preserve, study, interpret, and present sites of natural and cultural significance to further work with traditional communities to understand, experience, and perpetuate our shared cultural heritage. For example, in the Tsankawi Project and the Frijoles Canyon Cavate Project, both institutions have come together, and included the Pueblos of Cochiti and San Ildefonso, in exploring culturally and environmentally appropriate methods to better understand and manage ancestral Puebloan sites that lie within the jurisdiction of the Bandelier National Monument. In addition, a practical field-training program

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was developed and implemented to provide opportunities for National Park Service professionals and Native American interns. This partnership has served as a model cooperative program, and helped to stimulate dialogue between associated tribes and the park—dialogue that continues to be very alive and active today.

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INTERPRETATION, by Michael Newland, M.A., RPA:

Tribal governments govern public affairs, provide community services on their tribal lands, and operate in cooperation with federal, state, and local governments. However, controversies and failed policies that linger often hinder the interests of tribes to preserve, protect, and promote historical preservation. Tribal governments are endeavoring to carefully balance the need for economic development, environmental protection, and historical preservation. In striking this careful balance tribes face some unique challenges. To achieve a reasonable balance between competing interests, several principles, once understood, can help inform decisions and strengthen efforts. These principles include, but are not limited to:

- Tribal governments have legitimate and inherent sovereign rights within the federal structure of the United States;
- Tribal governments have environmental and cultural resources interest on and off the tribal trust land that they will seek to protect;
- Tribal cultures and traditions are intimately connected to the land and ecology, thus historical preservation is vital to the Native American cultures, literatures, histories, religions, political institutions, and values.

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As education and training are used to meet the critical interpretation and outreach needs, such principles and relationships should be incorporated into the curriculum.

ARCHAEOLOGICAL RESOURCES PROTECTION, by Lelie Mouriquand, M.A., RPA and Lynne Newell Christenson, Ph.D.:

Government-to-government relationships provide a mutually respectful means for communicating and decision making. Thus, defined protocols and standards for meaningful interaction, including early, transparent, consistent, and ongoing consultation and documented decision-making that reflects mutual objectives and the tribe's best interests should be created. While many agencies

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have their own consultation policies, there remains a significant problem with implementation and enforcement.

The central challenge is the lack of consistent, timely, and effective consultation. The lack of meaningful dialogues and conferral with tribes in the consultation process has seriously hampered progress in the government-to-government relationship. Often, tribes are contacted too late in the review process to have meaningful roles in decision-making. We recommend adopting and implementing specific policies and standards, such as the ones outlined in the Archaeological Standards and Guidelines comment section below. These standards would likely be beneficial to tribes and anyone involved in the CEQA process alike and would be necessary to highlight in SB 18 trainings and educational materials.

ARCHAEOLOGICAL STANDARDS AND GUIDELINES, by Adrian Praetzellis, Ph.D., RPA:

As stated above, the central challenge with preservation is the lack of consistent, timely, and effective consultation. The lack of meaningful dialogues and conferral with tribes in the consultation process has seriously hampered progress in the government-to-government relationship, as tribes are often contacted too late in the review process to have meaningful roles in decision-making. Thus, tribes are not accorded the respect and status to which they are entitled, leading to frustration, and in some cases, threats of litigation to exercise their rights.

We feel that the list of uniform standards and protocols to be developed in this Section is incomplete without including at least the following standards and protocols:

- Establishing an effective process to permit tribal and local governments/agencies to provide meaningful and timely input in the development of regulatory proposals concerning consultation. (See Appendix A attached).
- Developing an accountability process to ensure meaningful and timely input by tribes in the policies or action that has tribal implications. For example, "if the agency fails to meet the consultation requirements, the objecting tribe shall report to the committee and the committee shall review the tribe's concerns. If the concerns are warranted, the proposed action shall halt until the offending agency follows the prescribed consultation policy with the necessary tribe(s)."

- Establishing training and guidance to ensure satisfactory adherence including an understanding in: tribal sovereignty, government-to-government relations and responsibilities, and responsibilities to Indian tribes in the CEQA review process.

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- Beyond Compliance –

- Establish a communication network in which information is regularly exchanged with Native people. Host regular regional meetings to dialogue with Native people about issues of concern, to increase understanding of their position, and share information; create an interactive website to encourage dialogue.
- Extend outreach and training – education and training course on consultation requirements and policies. Dedicate a section of the website to Native issues including news items, guidance, and training information.
- Integrate timeless traditional teachings and values into modern day practices.

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Sincerely,

Michelle LaPena

Michelle LaPena
Tribal Attorney

White Papers Workshop
Yurok Tribal Office, Klamath, CA
13-Oct-08

Yurok staff and tribal members are highly upset and offended by the fact that the papers were even drafted without substantive Native involvement. There should be tribal people represented on the State Historic Resources Commission and the Archaeological Resources Not Involving Tribes from the beginning is an infraction of Environmental Justice since Indian people are impacted more than others by the impacts to their sites.

Tribes are wondering why they were consulted at this late stage; they should have been brought in earlier, such as when the problem was identified and the need to improve archaeological practices was proposed--and especially during the drafting of the White Papers. In fact, the ARC should have reached out to the Indian community to find a volunteer. Regarding emergencies, the state agencies need to make MOUs with tribes (which is required by the fed govt) regarding how to proceed during an emergency. The MOU would describe how to work with the tribe, who to call and when; then essential knowledge that the tribal people have about their sites would allow better protection of sites during emergencies. The SHRC needs to come meet with the Tribe on a govt to govt basis. In the White Papers they have admitted that "inadequate consultation" is currently a problem, and they have now lived up to that by not properly involving tribes from the beginning.

The laws should state that any Indian archaeological item should go back to the Tribe. This process should be STARTED OVER, with TRIBES and INDIANS fully involved from and beginning and at every step.

The archaeological laws, as currently set up, view cultural materials and artifacts as property, property to be owned by individuals or the United States government. This is inappropriate. There is a long term administrative record on this process; the Tribes need to get into the process and have it documented.

Tribes are the real owners of archaeological materials on private land. The tribes should have a method of preventing abuse and destruction of artifacts on private land or coming. When archaeologists are writing things to do with Indians, they need to be involving Indians. These are not just archaeologists' concerns—they are Indian concerns.

Non-Indians may not realize that this time, the Fall, is high-time for ceremonies for Indians. This is a very busy time for us and our ceremonies. When you come out of dance/ceremony, you don't just go right into business. The date of Oct 31 needs to be extended—or maybe it their consultation.

Our ancestors are as important as anyone else's ancestors. We don't want our past disturbed or dug up or taken other places.

The Tribe should be at the table for all decision-making.

Future representation: every tribe should receive a letter and be invited to a meeting, out of basic respect. The way it's being done is not going to work; it's just going to cause more problems. Indian people need to be involved at every step.

Appointments to the ARC should not be made just by archaeologists—should be from the Indian community, and should be some non-archaeologists.

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A better example of consultation was the way the OHP wrote to all the tribes and invited all the tribes to a meeting to discuss an idea, which was to put all the site information in an electronic database. They involved the tribes earlier, instead of just drafting something up

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**Native American Heritage Commission Comments to the State Historical
Resources Commission on the Practice of Archaeology in California**

(October 31, 2008)

By Anthony Madrigal, General Counsel NAHC

Introduction

The Native American Heritage Commission (NAHC) as the trustee agency of the State of California for the protection of Native American cultural resources, offers the following comments on the practice of archaeology in California to the State Historical Resources Commission (SHRC). These comments and recommendations are derived from the NAHC's experience working with tribes, agencies and developers as well as feedback from the California Indian community in regional workshops in which the NAHC has worked with the Committee of the State Historical Resources Commission and the Indian Programs Committee of the Society of California Archaeology to facilitate bringing forth comments from the California Indian community.

In response to the request of the SHRC, archaeologists have expressed their view of key problem areas in the way archaeology is practiced in California in a series of white papers prepared by archaeologists and in comments previously submitted to the State Historical Resources Committee. The white papers have provided useful beginning points for the discussion and these comments by NAHC are being offered for consideration and may be worked into future revisions of white papers.¹ The white papers should not be the only avenue for the Indian community to offer comment and participate in the process of reviewing the practice of archaeology. The NAHC views the establishment of the sub-committee to the SHRC for purposes of carrying out its mandate of reviewing the practice of archaeology and the appointment of Native Americans to this Committee as critical to the success of the ongoing process.

The NAHC wishes to emphasize that California Indian tribes as sovereign governmental entities will continue to exercise their right to engage in direct consultation with the state of California and jurisdictions of the state with respect to this issue, which is of the utmost importance to them, that is, the preservation of their traditional lands and cultural patrimony. California tribes are sovereign nations whose identity is integrally linked to the cultural landscape of California. Proposed Senate Bill 1828 Burton (Sacred Sites Bill) (2002) expressed this integral relationship as follows, "Spiritual integrity, community identity, political sovereignty and governance processes are intertwined in the cultural tradition that defines Native American tribes. In order to uphold inherent tribal rights with regard to cultural tradition, spiritual practices and self governance of California tribes, it is essential that the natural setting of these ceremonial and spiritual sites be preserved."

¹ The NAHC notes that the comments submitted herein to white papers are only the latest in California Indian efforts to address problems with the practice of archaeology in California that have resulted in destruction of many sacred sites and loss of cultural patrimony. Despite previous efforts, the cooperative strategy and working relationship needed between Indian people and archaeologists and local jurisdictions and developers to effectively protect and preserve California Indian's cultural patrimony, has not yet been realized. The NAHC notes the mandate of the SHRC pursuant to Public Resources Code 5020.5 to develop criteria and methods for determining significance of archaeological sites and for determining whether the most significant archaeological sites should be preserved intact or excavated and interpreted. The NAHC submits these comments pursuant to its mandate under Public Resources Code 5097.5.

Comments and Recommendations

At the outset it should be noted that there are fundamental differences in the way archaeologists and Native Americans view cultural resources in California. As discussed above California Indians had and have a close physical and spiritual relationship with their lands and natural world. This is rooted in California Indians long occupation and intimate relationship with the land and environment. California Indians know certain places and land forms to be sacred power areas or sacred ceremonial areas. Religious or ceremonial sites may include places associated with creation stories or other significant spiritual history as well as modern day places of worship. For California Indians man made villages, trails, gathering areas and ceremonial areas have a significance because they are in areas sanctified by those that once used these sites and adjacent plant and animal habitats.

Archaeology as practiced does not recognize that Indians are a living people who have a spiritual connection to the landscape and who have a special and traditional responsibility to steward the land and its resources. Many archaeologists fail to accept that Indians today have a spiritual connection to their ancestors. Archaeology is western science based and emphasizes the study of material items in a compartmentalized manner. Cultural resource management (CRM) as practiced in California, is project driven. Archaeologists have a set of goals to accomplish in a project, be it to complete a cultural resources assessment and mitigation plan for permitting project development or in the completion of an academic research field study. Archaeologists are in charge of the process and Indians are consulted when deemed necessary.

California Indians often feel patronized when they are asked to participate in a process in which they have had no hand in creating and which is fundamentally driven by different values and goals. The current practice of cultural resource management as it has resulted in loss of and destruction of sites, burials and loss of knowledge is unacceptable to California Indians. There must be a re-design of the CRM process to fully include Indian views and values. The NAHC offers recommendations below. Some of these recommendations have been and can be implemented by local jurisdictions. Some may best be implemented at the state wide level and may require legislation.

Professional Qualifications for CRM Practitioners

The California Indian community has grave concerns with professional competency, cultural sensitivity and ethics of many of the practicing archaeologists and CRM practitioners in California. There are no State professional qualifications mandated for the practice of archaeology and cultural resource management. Often archaeologists are not knowledgeable enough about local tribal culture and history. There is no effective grievance process or licensing system in place to weed out unqualified practitioners.

Archaeologists, CRM practitioners as well as staff of many agencies and municipalities charged with cultural resource evaluation and management often do not have sufficient training or knowledge of CEQA and cultural preservation laws to comply with statutory mandates. CRM practitioners may not be sufficiently familiar with current laws including the CEQA process, the National Historic Preservation Act 106 process, the California Public Resources Code and Health and Safety Code relating to the reporting of Native American remains and the designation of a Most Likely Descendant.

Recommendation

Professional Education and Experience

The NAHC recommends that a minimum education and experience standards be established. Archaeologists and CRM practitioners must have a minimum education, training and experience levels for various tasks. They should possess a working knowledge of cultural resource laws. Practitioners should possess a minimum level of education in California archaeology and knowledge of the history and culture of the local tribe on whose lands a project is undertaken. They should be familiar with the local Indian community and have established a good working relationship with the local Indian people that have knowledge of cultural resources.

Minimum requirements in part based on those established by the U.S. Department of Interior, National Park Service (36 CFR Part 61) should be set. These include:

- A graduate degree from an accredited institution in archaeology, anthropology, or closely related field:
- At least one year of full time professional experience or training in archaeological research and cultural resources management.
- At least one year of supervised field and/or laboratory experience in California archaeology.
- Possess a working knowledge in the application of CEQA, Public Resources Code and Health and Safety Code and other state, county and city cultural resource preservation laws and regulations.
- Completed at least one class in CEQA and CEQA process.
- Possess a working relationship with the consulting tribe prior to conducting any research on tribal land and possess knowledge of the history and culture of the local tribe.
- Completion of at least one class in ethics of archaeology.
- Complete at least one class in cultural sensitivity training conducted by Native Americans.
- Internships are strongly encouraged as part of academic preparation for CRM practitioners.

Licensing

The NAHC recommends that a licensing requirement be instituted for CRM practitioners, including archaeologists. In addition to requirements imposed by the profession, there would be a requirement of a minimum number of hours of class in California Indian history and culture,

professional ethics and cultural sensitivity training. A revocable license to practice CRM archaeology would provide a level of accountability.²

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List of Qualified Consultants and Consultant's Memorandum of Understanding

Tribes and tribal cultural staff have grave concerns about the qualifications and independence of CRM consultants hired by developers. In addition to a licensing requirement the NAHC recommends that lead agencies should develop a list of qualified CRM practitioners that they will utilize. If the agencies do not hire CRM consultants directly, then developers must choose from an approved list of qualified consultants. Tribes should have the opportunity to have input in the process of establishing the list. Consulting tribes should have the right to oppose the approval of consultants on a project for cause. A process should be established whereby tribes may address issues and grievances with consultants/archaeologists. The process should allow for suspension or removal of a consultant from the approved list as well as for an appeal process.

C-3

In the case where developers hire the consultant directly an MOU should be utilized that makes it clear that the consultant is preparing a CEQA document for the lead agency although they are being compensated by the developer. The agency should have the right to see any all communications between the consultant and the developer if necessary. It should require that the consultant disclose any revisions that have been made to the technical document at the request of the developer. The MOU would make clear consultant responsibilities and provide the consultant a degree of independence and provide accountability.

Model Standards and Guidelines for CRM Practice

Recommendation

The Native American Heritage Commission and the State Historical Resources Commission and the Governors Office of Planning and Research in consultation with California Tribes and archeologists should develop Model Guidelines for the practice of cultural resource management in California. Local jurisdictions would be encouraged to adopt in consultation with local tribes these guidelines as part of local CEQA guidelines and cultural resource ordinances and protocols. These guidelines could also be a basis for new legislation. The guideline would address the following key areas of concern that have been expressed by California tribes and tribal people.

D-1

Tribal Consultation

The proposed guidelines would provide for tribal consultation and involvement at every level of the project. The guidelines would provide protocols aimed at ensuring tribes are afforded timely notice and real opportunity for consultation and participation in project development. The guidelines would require contact be made with tribes on the NAHC contact list in order to obtain their input. The guidelines would emphasize that in some cases the existence of cultural resources may be known only to tribes or Native American individuals or elders. The Governor's Office of Planning and Research Tribal Consultation Guidelines (OPR Tribal Consultation Guidelines Supplement to General Plan Amendment 2005) should be utilized as a guide for tribal consultation. Model notices and protocols for tribal consultation should be made available to local jurisdictions.

D-2

² The NAHC recommends the establishment of a State Licensing Board composed of archaeologists and Native Americans. The Board would be authorized to set qualifications and administer a qualifying exam.

Monitoring

The proposed guidelines would require the use of Native American Monitors when an archaeologist is employed on the project and where Native American cultural features are likely to be affected in order to ensure proper identification and care is given cultural resources that may be discovered. The NAHC recommends the use of guidelines for Native American monitors be adopted in order to provide people who hire monitors/consultants with an understanding of the scope and extent of knowledge that should be expected.

D-3

Accuracy and Completeness of CRM Reports

California Indians working in area of cultural resources have concerns about the completeness and accuracy of CRM reports. Tribes indicate that documentation that derives from CRM projects is often inadequate at all levels. Archaeologists often make decisions regarding site significance based on incomplete and inaccurate information resulting in site destruction. Often Phase I assessment surveys find nothing of significance because the archaeologists have not been required to consult with a culturally affiliated tribe. Very general recitation of tribal culture and history appears over and over in boilerplate excerpts in many CRM investigations. Consideration of local tribal culture and history linked to the landscape and its resources is inadequate. The guidelines should require that during the initial study there be consultation with culturally affiliated tribal people. Tribal cultural experts may have essential knowledge of the traditional landscape. The guidelines would provide uniform and explicit expectations for studies and standards for documentation and preparation of CRM reports, as well as standardized report formats. The guidelines would provide a consistent and objective standard for evaluation of significant effects. The guidelines would provide that research designs, phase I, II and III testing plans be completed in consultation with the culturally affiliated tribe. The guidelines would provide that lead agencies should include in the mitigation plan provisions for identification and evaluation of accidentally discovered resources. Also they would provide that final report containing site forms, site significance and mitigation measures should be submitted immediately to the lead agency and that all information regarding site locations, Native American human remains and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.

D-4

The proposed guidelines would provide that the affected tribe and tribal cultural experts would have the opportunity to submit their views in a separate assessment report addressing the significance of the cultural resources, preservation, mitigation and disposition, after completion of the archaeological report. The views of the tribal cultural experts would be considered by the lead agency.

Archaeological Significance

California Indians and tribal cultural program staff have expressed grave concern over how a resource is determined as significant/unique/eligible or non-significant /non-unique/non-eligible. Tribal cultural experts emphasized that what is significant must also be a tribal cultural determination. The proposed guidelines would include uniform standards for determining significance and severity of impacts to cultural resources. The guidelines would consider and

D-5

discuss CEQA thresholds for significance, and National /California register eligibility as well as cultural significance.³ As indicated above, significant resources for Native Americans includes not only graves and artifacts, but natural resources used for food, ceremonies or traditional crafts and places that have special significance because of the spiritual power associated with them.

Tribal cultural staff have concerns that sites are often written off as non significant individually and that the extent of the overall cultural landscape and cumulative impacts are not considered. The guidelines would put forth a regional approach for determination of significance (including connected sites, entire habitation areas and landscapes). As noted by Susan Hector archaeological sites are often interconnected locations used systematically by people that include living areas and processing locations. They may also be tied to places that, although not archaeological sites, are part of the overall cultural landscape such as resource gathering areas and sacred or religious places.⁴

D-5

Preservation

Tribes and tribal cultural staff feel strongly that human remains, burial goods, ceremonial resources and sacred items belong to the Tribe and should always be repatriated or reburied in the place where discovered. Tribes prefer preservation in place for village sites and other significant areas. NAHC recommends the development of guidelines for uniform standards for mitigation and the institution of design considerations that are based on primary goals of avoidance and preservation, and providing for data recovery only if avoidance and preservation are not feasible.

D-6

Accessibility of Reports and Data

Tribes and tribal cultural staff have repeatedly voiced concern over the adequacy of the current CHRIS system. More uniformity in record keeping as well as secure preservation of reports and provision of reasonable tribal access and availability to tribes is essential for preservation of cultural patrimony. Each tribe should have availability of information from archaeological reports and other information for use in its own tribal repositories and archives. Effective protocols to provide for confidentiality of certain sensitive information must be in place. Tribes have also expressed concerns over their access, and the completeness and timeliness of reports and data on tribal traditional lands. The guidelines would ensure that copies of reports prepared by CRM practitioners including all documentation, photos and field notes are required to be filed at archaeological centers and that copies must be provided to tribes in a timely manner.

D-7

³ The county of San Diego in consultation with Native American cultural experts has developed local CEQA guidelines for determining significance, determining severity of impact, standardized report formats, mitigation measures, guidelines for placement on the county's CEQA consultant list and established an MOU that details responsibilities and expectations of county, developer and consultant in preparation of CEQA technical documents. The guidance, which has proved useful and which is based on CEQA guidelines and local resource protection ordinance, provides that any archaeological site that yields information or has the potential to yield information is considered a significant site. The guidance also provides that if it is agreed to forego significance testing on cultural sites, the sites will be treated as significant resources and must be preserved through project design. A treatment plan must be prepared that will include preservation of cultural resources. The guidelines also provide consistent uniform standards for determining severity of impact. See "Guidelines for Determining Significance: Cultural Resources Archaeological and Historic Resources," Department of Planning and Land Use, Department of Public Works, San Diego County (Dec 2007). Riverside county has also developed protocols requiring an MOU between the county, the project applicant and the archaeological consultant that specifies the role and responsibility of the archaeological consultant.

⁴ Hector, Susan. M. (2007) "Archaeological Resources Conservation: State Historical Resources Commission White Papers."

Training

Provide training on cultural resources statutes as well as CEQA compliance to local government and public agency planners, administrators and decision makers.

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Cultural Resources Protection

Tribes and tribal cultural staff have repeatedly made the point that cultural resources are Native American cultural resources possessing a spiritual significance and that Native caretakers of culture must be allowed to take charge and care for these resources in the a proper and respectful manner. They expressed that the preferred method of disposition for cultural resources items is reburial or repatriation. They expressed the opinion that education of and consultation with the property owner/developer and provision for early notice of the project and of provisions affording early consultation would be most useful and may allow for agreements between the parties regarding protection, treatment plans and disposition and preservation of cultural resources. Tribal cultural resource people reported that there has been some success and encouraged continued efforts of tribes to work with local jurisdictions to implement policies and preservation ordinances addressing tribe's rights to cultural resources.

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Recommendation

- Cultural resource and tribal monitoring agreements (preexcavation) between tribes and land owner/developer should be the preferred method for protection of cultural resources.

] E-2

-The NAHC recommends that guidelines, perhaps in form a model cultural resource protection ordinance, be developed for the process of consultation with landowner and for the process of repatriation by landowner to the tribal descendent group. These guidelines should include provisions for early notice to tribes and required consultation with the land owner. This would facilitate and encourage achieving an agreement as to cultural resources that are discovered.

] E-3

-The NAHC recommends incorporation of standards for archaeological work that provide more emphasis on creative site protection rather than destruction through mitigation. Archaeological sites, traditional cultural properties and other cultural properties should be given priority in land management decisions.

] E-4

Also Tribes and tribal cultural staff have repeatedly expressed the need for overall regional cultural preservation planning and development of conservation plans that identify important cultural resources threatened in their traditional lands and then set out a strategy to protect these resources. California Indians and tribal cultural experts would play key roles in identifying important sites and places that need to be protected. There must be coordination of tribal, state, federal and local government entities working together to achieve shared conservation goals and to develop a regional cultural preservation and management strategy.

Recommendation

The NAHC recommends that the following strategies be implemented:

-Implement a State wide level program aimed at creating, supporting and overseeing of cultural resource management plans in every local jurisdiction and at tailoring a funding mechanism.

-The guidelines would encourage Tribes individually and in partnership with each other and conservation groups and agencies, to purchase, set aside, and otherwise establish protective restrictions for culturally sensitive areas.

E-5

- If a tribe is interested in involving the landowner the local government should be encouraged to facilitate this. Each local jurisdiction should develop its own policies with respect to encouraging landowner awareness and voluntary landowner participation in protection of cultural resources. Public workshops and educational sessions may provide forums for tribes to share information and discuss preservation of resources with landowners.

E-6

-Local and state governments and tribes should work together to develop opportunities for conservation easements and private agreements to protect cultural places. Conservation easements can be held by tribes per SB 18. The creation of an incentive program such as conservation tax credits to encourage land owners to voluntarily protect cultural resources or that compensates them for giving up development rights should be encouraged. Incentives are available from California Department of Conservation and the Department of Fish and Game. These should be explored. Local governments should examine opportunities to work with tribes to develop goals for protection of cultural places in open space element planning.

E-7

Curation

Most California Native people involved in tribal cultural programs expressed that they were generally opposed to curation of archaeological collections by non Indian museums and institutions as a means of disposition but that any decision on disposition should be made by the people of the tribe or tribes from whose lands the resource is taken. The white paper addressing Curation and Collections acknowledges that there are serious problems with the curation of cultural resources and that few CRM generated collections are curated. Many end up being stored in warehouses. Although the ostensible reason for curation is to ensure availability for further research, most collections are never utilized in this way.

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The guidelines would provide that the preferred method for disposition and curation of cultural resources would be repatriation to tribes. Tribes, landowners and developers would be required to consult on initiation of the project on a possible agreement to return cultural and archaeological items to tribal ownership. Some tribes have established their own repositories for their cultural patrimony. These tribal repositories contain archives, site records, field notes, oral histories and a variety of records of traditional knowledge as well as collections in some instances. Tribes in possession of repatriated collections could chose the appropriate method for disposition, that is to re-bury and/or curate depending on tribal traditional beliefs.

Toward a New Model for CRM Practice

California Indians believe that it is of the utmost importance that their cultural patrimony and knowledge derived from it be preserved for continued use and benefit of tribal people. They are keenly aware of their traditional obligation as stewards of their lands and its resources. California Indians believe that California tribes' primary right of ownership and control over their cultural patrimony must be a guiding principle of cultural resource preservation. Many California Indians

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believe that a new model incorporating this guiding principle for cultural resource preservation is needed.⁵

⁵ The NAHC believes that all parties should work toward a new model for CRM practice, wherein Native knowledge and ways of knowing and relating to places, remains, sites, landforms, power areas and other areas used by Native people are valued equally and afforded co-equal status with western ways of knowledge. Tribal cultural experts would have a primary role, at least equal to that of archaeologists in the current process and their assessment and recommendations would be entitled to significant weight. Native values of respect and reciprocity for land and all its resources would be emphasized. Tribal cultural experts would work in collaboration with CRM practitioners, biologists and other western scientists to preserve the full range of cultural resources and knowledge important to Indian people for the benefit of Indian people. Western archaeological views of curation would be broadened to include tribal traditional beliefs in the care and disposition of cultural resources. For an idea of how a model reflecting western and Native values might work, see "Integrating Native Science Into Tribal Environmental Protection Agencies," Trafzer, Sakiestewa and Madrigal in *American Behavioral Scientist* 51 (2008)

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To: SHRC_ARC@YAHOO.COM
Date: Friday, October 31, 2008 5:33:42 PM
Cc: Tuck, Patty (TRBL)
Subject: State Historical Resources Commission Archaeological Whitepapers

October 31, 2006

State Historical Resources Commission

Re: Agua Caliente Band of Cahuilla Indians response to State Historical Resources Commission Archaeological Whitepapers

Dear Commissioners:

The Agua Caliente Band of Cahuilla Indians (ACBCI) is an active partner in the development of the Coachella Valley , but it is also concerned about the preservation and management of its cultural heritage. The State Historical Resources Commission (SHRC) provided interested stakeholders with a series of whitepapers addressing five cultural resources policy areas. The cultural resources addressed/affected by the SHRC and whitepaper are an integral part of the Tribes' cultural heritage, and the Tribes should be allowed greater input regarding the protection, preservation, interpretation and disposition of all Native American archaeological resources. Thank you for allowing the Tribe to comment on the SHRC whitepapers. While the whitepapers address issues and make recommendations regarding cultural resources, they fail to address some specific Native American concerns which I discuss below.

Conservation

Principal Author:

Susan M. Hector, Ph.D., RPA

Principal, ASM Affiliates, Inc., Carlsbad

While I am in agreement with Ms. Hector's paper I believe a statewide conservation plan is necessary to implement her recommendations. The THPO proposes the following recommendation be taken into consideration:

Statewide Cultural Resources Conservation Plan (SCRCP)

The State of California is rich in history, culture, regional character, and diversity, all of which contribute greatly to our collective heritage and community identity. Cultural and historical resources are those places that are created by and reflect upon the people who have lived for thousands of years in what is today California . The Tribes of California have long recognized the value of preserving their cultural resources.

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Recognizing current and future economic growth and the potential impacts to both known and unknown cultural resources the ACBCI THPO proposes the development and implementation of a Cultural Resources Conservation Plan (SCRCP) similar to the Riverside County's Multiple Species Habitat Conservation Plan (MSHCP). The overall goal of the SCRCP shall be to conserve and maintain cultural resources while allowing future growth. The overall goals of the

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SCRCP shall include:

Cultural Resource Goal: In the SCRCP Plan Area, Identify and Conserve threatened and/or endangered cultural resources (Traditional Cultural Places, Cultural Locations, Archaeological Sites, Historic Buildings , National Register Properties, Historic Communities, and Historic Trails).

Economic Goal: Improve the future economic development in the state by providing an efficient, streamlined regulatory process through which Development can proceed in an efficient way. The SCRCP and General Plans will provide the state with a clearly articulated blueprint describing where future Development should and should not occur.

Social Goal: Provide for permanent open space, community edges, and recreational opportunities, which contribute to maintaining the community character of the State of California .

The SCRCP goals shall be met through a variety of methods:

- Work cooperatively with Tribal, federal, state, and local governmental entities to achieve shared conservation goals.
- Develop regional management strategies centered on adaptive management concepts.
- Purchase land containing high value cultural resources when and if public monies become available.
- Create an incentive program to encourage private land owners to voluntarily protect cultural resources that are on their land or that compensate them for giving up development rights to lands containing cultural resources.
- Implement land use regulations to ensure that when private land is developed cultural resources are considered as a part of the development review approval.
- Inform and educate the public about the past and engage them in saving our collective heritage for the future.

Curation

Principal Author:

Cindy Stankowski, M.A.

Director, San Diego Archaeological Center, San Diego

Although archaeologists recommend curation in perpetuity as the preferred and recommended disposition of archaeological collections, the protection, proper handling, and disposition of all archaeological items are of the utmost importance to Tribes. The ACBCI THPO is not opposed to curation as a means of disposition however the California Environmental Quality Act (CEQA) does not require curation. Therefore the repatriation of all archaeological items as a preferred method of disposition (for some Tribes) is not contradictory to CEQA. Repatriation as a means of disposition may occur between the agency/landowner and multiple tribes.

The ACBCI THPO recommends early consultation between the lead agency, property owners/developers and the affected tribe(s). Such consultation is a useful way to address a myriad of issues- including treatment plans and disposition- and may allow for the property owners/developers and affected tribe(s) to enter into agreement regarding the protection, preservation, and disposition of cultural resources which may be present or discovered during build-out of the proposed development.

Consultation between the affected tribe(s) and property owner/developer may lead to agreements addressing the treatment and disposition of archaeological resources that may be impacted by a proposed development. Such consultation and agreements shall be formulated on a case by case basis and should be the preferred method in addressing cultural resources issues.

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The treatment and final disposition of all archaeological resources shall be done so with the full input, consideration, and implementation of recommendations of the affected descendant groups.

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Interpretation

Principal Author:

Michael Newland, M.A., RPA,

Archaeologist, Anthropological Studies Center , Rohnert Park

The ACBCI THPO recommends consulting with the Native American community as well as other ethnic and affected communities in the state's efforts to provide interpretive information to the public at large. The proposed recommendations made by Mr. Newland are very well thought out but fail to incorporate direct outreach to the Native community. The involvement and input of Tribes is necessary for the interpretation of archaeological resources.

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Archaeological Resources Protection

Principal Authors:

Leslie Mouriquand, M.A., RPA

Archaeologist and Cultural Liaison, County of Riverside and

Lynne Newell Christenson Ph.D. Historian, County of San Diego

Guidelines regarding the determination of significance of archaeological resources should be developed in government-to-government consultation with the tribes. The guidelines should include the parameters recommended in Ms. Mouriquand's whitepaper as well as the following:

- Tribal consultation/scoping sessions
- Implementation of tribal recommendations
- Regional and cumulative impacts to resources

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In addition the THPO recommends the Office of Historic Preservation consider waiving fees imposed on Tribes for conducting research at the California Historical Resources System Centers. The ethical responsibility to protect archaeological and cultural sites lies in the hands of the Native Community and staff who represent the Tribes.

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Archaeological Standards and Guidelines

Primary Author:

Adrian Praetzellis, Ph.D., RPA

Professor of Anthropology, Sonoma State University , Rohnert Park

The THPO recommends refining and updating the existing scopes of work for Phases I-IV for archaeological investigations in consultation with the Tribes and integrated into CEQA. Consulting tribe(s) shall have the opportunity to provide input on research design. Additionally

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the Scope of work and research design for a proposed project should take into consideration the cumulative impacts on resources.

The working relationship with tribes and responsibilities of consultants/archaeologists should be further refined consistent with efforts to protect and preserve the invaluable and finite archaeological resources under the County's jurisdiction. Notices from consultants/archaeologists to tribes do not constitute government-to-government consultation. The establishment of a protocol whereby the agency, property owner/developer- not the consultant/archaeologist- and affected Tribe(s) meet regarding proposed projects should be taken into consideration.

The Agua Caliente Band of Cahuilla Indians reserves the right to submit additional comments regarding any future recommendations submitted by the CRWG and may submit comments addressing issues/concerns not addressed by the CRWG for future consideration by the County of Riverside for inclusion in the County's cultural resource policy and/or General Plan amendment.

Again, we appreciate the opportunity to review the SHRC whitepapers. You may contact me at (760) 699-6907 if you have any questions or concerns. You may also email at ptuck@aguacaliente-nsn.gov

Sincerely,

Patricia Tuck, THPO
Director/Archaeologist
Tribal Historic Preservation Office
AGUA CALIENTE BAND OF CAHUILLA INDIANS

c: Agua Caliente Cultural Register

Patricia Tuck
Director/Archaeologist
Tribal Historic Preservation Office
Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive
Palm Springs, CA 92264
Office (760) 699-6800
Direct (760) 699-6907
Fax (760) 699-6924

Please note our new email extension.

ptuck@aguacaliente-nsn.gov

5

From: joseph hostler (joehostler@yahoo.com)

To: SHRC_ARC@yahoo.com

Date: Friday, October 31, 2008 5:42:03 PM

Subject: State Historical Resources Commission Archeology Committee white paper comments

To whom this may concern:

I, Joe Hostler am submitting the attached comments in regards to archeological resources in California. I request meaningful Tribal Consultation. Thanks

Joe Hostler

PO Box 757
smith river, ca
95567

(707)499-3811

To Whom this may concern:

I, Joseph Hostler am submitting these comments for the State Historical Resources Commission Archeological Resources Committee White Papers. I first and foremost would like to say that I don't agree with the current process that has been followed by the SHRC Archeological Resources Committee in updating and improving archeological practices in California. I am greatly disappointed in the lack of formal Tribal Consultation with California Tribes and the very limited opportunity for Native American citizens whose ancestors are the very people impacted by archeological practices. Tribes and Native Americans have been limited to the very end of the process and are in-essence asked to check off on other people's ideas, rather than having a meaningful opportunity to contribute our own ideas. Archeology in California is currently not friendly to Native American beliefs, but must be more accommodating to Tribes and Native American individuals by conducting formal Government-to-Government consultation and having Native Americans involved in the early development. One such way to improve this process is having a committee representative from either a Tribe or perhaps the Native American Heritage Commission involved early and intensively.

I therefore request that this whole process be stopped and restarted from the beginning to include meaningful Tribal Consultation and significant contribution from Native American individuals whom are the MLD's of California's archeological practices.

I recognize the good intent of the committee to improve the currently failing archeological practices and look forward to being able to contribute meaningful information into improving archeology, not just submitting a thumbs-up or thumbs-down to someone else's ideas. I have read the White Papers and see that there is virtually no contribution from the Native American perspective. I only see ideas from the archeologist's perspective. This concept is the exact problem with archeology in California, Native American beliefs and cultural uses are only viewed as a tool for archeology rather than Cultural Resource Management.

I view good Cultural Resource Management as integrating Native American beliefs and contemporary cultural uses before digging up ancestors.

I do however recognize that my suggestion of halting this comment process and starting over is unpopular and frustrating for those whom have worked hard thus far, but if the intent is improving archeology, formal Tribal government consultation in paramount to solving the existing problems.

As a member of a federally recognized tribe and decendent of the Xush A.K.A Tolowa of Del Norte County my family has been greatly impacted by corrupt archeology when one of our sacred sites was labeled by a bad archeologist to not be a significant cultural resource worthy of protection from development. This archeologist was hired by the land developer and had no integrity or professionalism when he in person told my family that we didn't know our own sacred sites, and he knew more about our culture than we ourselves did. On a hillside above the mouth of the Smith River, my ancestors have used numerous sacred sites which are significant cultural properties for pre-historical and contemporary Native American cultural use. Recently, a land developer proposed to blow up a sacred rock outcropping and develop the site. As I understand, this land developer hired Janet Eidsness to perform CEQA compliance for cultural resources

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and when she correctly included this sacred site as being greatly impacted by development, Hank Westbrook fired her for not agreeing with his plans to destroy this sacred site for development. Hank Westbrook then hired another archeologist with no integrity to classify the site not-significant even in the presence of Tolowa people whom know the significance of the site. This is what needs to end. Bad archeologist like this need to be shut down.

I look forward to contributing my ideas into a more meaningful forum than what is in place. Thanks Joe Hostler

Joe Hostler
PO Box 757
Smith River, CA
95567

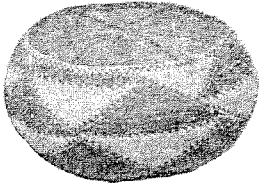
A

From: Gregg (pvtepadirector@comcast.net)
To: SHRC_ARC@YAHOO.COM
Date: Friday, October 31, 2008 2:20:50 PM
Subject: Comments on SHPO Archaeological Resource Society Plan

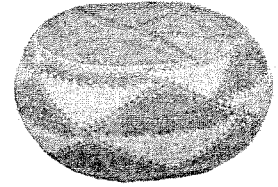
Attached are our comments.



Gregg Young, M.A.
POTTER VALLEY TRIBE
ENVIRONMENTAL OFFICE
2251 S. STATE STREET
UKIAH, CA 95482



POTTER VALLEY TRIBE



2251 S. State St. • Ukiah, California 95482 • (707) 462-1213 • Fax (707) 462-1240 • E-mail:
pottervalleytribe@comcast.net

Chairperson
Salvador Rosales

Secretary
Rosemary Rosales

Treasurer
Losario Rosales

*Member-At-Large & Appointed
Spokesperson*
Norma Rosales

October 31, 2008

Archaeological Resources Committee
California State Historic Preservation Office
1416 9th Street, Room 1442
Sacramento, CA 95814

Re: Comments on Position Papers

To Whom It May Concern:

We would like to commend the Archaeological Resources Committee of the State Historical Resources Commission for beginning to tackle the updated 2006-2010 plan, especially in its attention to the best practice standards for archaeology in California. In order to make our voice heard in this important endeavor in historic preservation, we have provided some of our own policy ideas and suggestions concerning the position papers provided.

Simply put, tribes must have a greater role in determining the fate of sacred objects. The way to achieve this is through mutually respectful relationships between tribes and the scientific community in which all parties acknowledge tribal sovereignty.

Conservation

In terms of conservation, our Tribe favors collaborative partnerships to develop joint management plans for the conservation of archaeological sites. Collaboration allows scientists and Native Americans to insure that both the scientific value of the sites and the cultural and spiritual significance of the sites are respected and protected. In recent years, the National Park Service expanded upon its essential mission to preserve, study, interpret, and present sites of natural and cultural significance to further work with traditional communities to understand, and perpetuate our shared cultural heritage.

The Tsankawi Project and the Frijoles Canyon Cavate Project provide examples of institutions coming together. These projects included the Pueblos of Cochiti and San Ildefonso, in exploring culturally and environmentally appropriate methods to better understand and manage ancestral Pueblo sites that lie within the jurisdiction of the Bandelier National Monument. In addition, a practical field-training program was developed and implemented to provide opportunities for National Park Service professionals and Native American interns. This

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partnership serves as a model cooperative program, helping stimulate dialogue between associated tribes and the park. } c

Interpretation

The position paper on the topic of "interpretation" addresses an important topic but fails to include sufficient information on the tribal perspective. Tribal governments are attempting to carefully balance the need for economic development, environmental protection, and historical preservation. In striking this careful balance between competing interests, tribes face some unique challenges. Several principles can help inform decisions and strengthen efforts. These principles include:

- Tribal governments have legitimate and inherent sovereign rights within the federal structure of the United States;
- Tribal governments have environmental and cultural resource interests on and off tribal trust land that they will seek to protect;
- Tribal cultures and traditions are intimately connected to the land and ecology, thus historical preservation is vital to the survival of Native American cultures, literatures, histories, religions, political institutions, and values.

These principles and relationships must be incorporated into the curriculum of education and training programs to meet critical interpretation and outreach needs. } D

Archaeological Resources Protection

With regard to archaeological resources protection, our Tribe believes it is paramount to define protocols and standards that facilitate meaningful interaction between tribes and the scientific community. Such meaningful interaction, as we see it, must include early, transparent, and sustained consultation with tribes, as well as a documented decision-making process that reflects tribal interests. }

We recommend adopting and implementing policies and standards like the ones outlined in the Archaeological Standards and Guidelines comment section below. These standards would benefit tribes and anyone involved in the CEQA process at large. Moreover, these standards should be included in SB 18 trainings and educational materials. } e

Archaeological Standards and Guidelines

On the issue of archaeological standards and guidelines, our Tribe believes that the central challenge to preservation is the lack of consistent, timely, and effective consultation with tribes. Therefore, the list of uniform standards and protocols to be developed in this Section is incomplete without the inclusion of the following: } F

- The establishment of an effective process to permit tribal and local governments/agencies to provide meaningful and timely input in the development of regulatory proposals concerning consultation. (See Appendix A attached).

F-1

- The development of an accountability process to ensure meaningful and timely input by tribes in the policies or actions that have tribal implications. For example, "if the agency fails to meet the consultation requirements, the objecting tribe shall report to the committee and the committee shall review the tribe's concerns. If the concerns are warranted, the proposed action shall halt until the offending agency follows the prescribed consultation policy with the necessary tribe(s)."

F-2

- The establishment of standardized training and guidelines to guarantee adherence to such principles including an understanding in: tribal sovereignty, government-to-government relations and responsibilities, and responsibilities to Indian tribes in the CEQA review process.

F-3

- The establishment of a general ownership policy whereby human remains and cultural items discovered on public property may be transmitted directly to tribes whose aboriginal territories encompass the public property where the item(s) was discovered.

F-4

- Beyond Compliance –

- The establishment of a communication network in which information is regularly exchanged with Native people. The creation of regular regional meetings to dialogue with Native people about issues of concern, to increase understanding of their position, and share information; create an interactive website to encourage dialogue.
- The extension of outreach and training including a training course on consultation requirements and policies. The dedication of a section of the website to Native issues including news items, guidelines and training information.
- The integration of traditional teachings and values into modern day practices.

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We greatly appreciate you having provided us with both the notice and the opportunity to participate in this process. We look forward to hearing your feedback regarding our comments.

Sincerely,



Gregg Young, M.A.
Environmental Director

Appendix A

Proposed Minimum Requirements for a Valid Consultation

Modified from the National Congress of American Indians, Resolution #SAC-06-026

For Action at the Local Agency Level:

(1) Adequate notice so that Tribal governments have a meaningful opportunity to be heard. Adequate notice shall include, but is not limited to:

(A) a candid written statement of what a Department or Agency is proposing to do, including all components of a proposed action provided at least two months before any meeting with Tribal governments to address the proposed action; and

(B) all information that the Department or Agency has that shows a reasonable basis for the proposal and any information that the Department or Agency has that questions the basis for the proposal, to be provided to Tribal governments at least two months before any meeting with Tribal governments to address the proposed action;

(C) a statement of all potential effects of the proposed action on Tribal governments, their members, and tribal resources of all kinds, and present and future resources for agency undertakings to assist or fund Tribal governments or other undertakings that affect Tribal governments and tribal resources of all kinds;

(2) A Meaningful Opportunity to be Heard includes, but is not limited to:

(A) an initial meeting at the local agency office level, after giving adequate notice, where Tribal governments and other interested parties may state their views on the proposed action, request additional information, suggest alternatives to the proposed action, and where there shall be joint deliberation among the Tribal governments, other interested parties and the agency; and,

(B) Where there was any Tribal Questions, Suggested Alternative or other Recommendation stated at the first meeting, a second meeting shall be held at the local agency office level after any requested additional information has been provided to Tribal governments and other interested parties, to allow Tribal governments and other interested parties to state their views and engage in joint deliberations on the proposed action after reviewing the additional information and hearing the comments of the Tribal governments and other interested parties; and,

(C) No change shall be made in a proposed action until all meetings are completed and all actions required under the following section (3) have been completed.

(D) All meetings shall be transcribed by a court reporter as part of the official record of the consultation process.

(3) Publication of Tribal Comments, Questions, Suggested Alternatives and other Recommendations

(A) The Director of the Local Agency or a designated actor for the Director shall produce a written summary of the comments, questions, suggested alternatives and other recommendations as to the proposed action, and provide answers to the questions; and,

(B) The Director of the Local Agency shall cause the written summary to be distributed to all Tribal governments served by Local Agency, with one month's prior notice of a meeting to consider a proposed final action.

(4) Serious Consideration of Tribal Comments, Suggested Alternatives and other Recommendations.

(A) The Director of the Local Agency shall issue notice of a proposed final action to all Tribal governments and other interested parties that participated in meetings or submitted comments to the Local Agency. A proposed action cannot be implemented until all Tribal governments served by the Local Agency and other interested parties are given notice that the final action shall be implemented. There shall be a period for submission of written comments between issuance of the proposed final action and notice of implementation.

(B) The proposed final action shall incorporate, to the extent feasible, the comments, suggested alternatives and other recommendations of Tribal governments, including recommendations that the proposed action not be done.

(C) Where a suggested comment, alternative or other recommendation has not been given effect in the proposed final action, the Director of the Local Agency shall provide in writing to the Tribal government or other interested party making the comment, alternative or other recommendation, the reason for not incorporating the suggested comment, alternative or other recommendation into the proposed final action. Any reason for not incorporating the suggested comment, alternative or other recommendation must be substantial.

(D) Notwithstanding any other provision of this paragraph, if percent (50%) of the federally recognized American Indian and Alaska Native Tribal governments served by the Local Agency affirmatively state their opposition to the proposed action, after notice, and the end of at least a one month period to submit comments or recommendations, the action shall not be implemented and the Director of the Local Agency Secretary shall state in writing that the proposed action is not being implemented and the reason why the proposed action is not being implemented.

(5) Nothing in this section is intended to apply to the personnel matters of any Department or Agency that has existing statutes, regulations and policies concerning consultation with Tribal governments on personnel matters.

7

From: Suntayea Steinruck (susteinruck@tolowa.com)
To: SHRC_ARC@yahoo.com
Date: Friday, October 31, 2008 4:55:27 PM
Subject: White Paper Comments

Paper Title: White Paper Comments

Name and Affiliation: Smith River Rancheria, Tolowa

Date: October 31, 2008

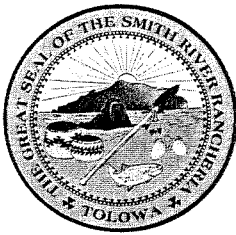
Contact Information: Suntayea Steinruck 707-487-9255 X 3180

Comment: Please see letter attached. Hard letter copy to follow.

*Suntayea Steinruck
NAGPRA/THPO Officer
140 Rowdy Creek Road
Smith River, CA 95567
(707) 487-9255 X 3180
(707) 487-0930 fax
"Memories are the greatest photograph." ~ss*

*****Smith River Rancheria Confidentiality Notice*****

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed.



Smith River Rancheria

140 Rowdy Creek Rd, Smith River, CA 95567-9525
Ph: (707) 487-9255 Fax: (707) 487-0930

Kara Brundin
Miller
Chairperson

Denise Padgett
Vice Chairperson

Sharyne R. Harper
Council Secretary

Joel Bravo
Treasurer

Marian Lopez
Council Member

Loren Bommelyn
Council Member

Joseph Giovannetti
Council Member

Russ Crabtree
Tribal
Administrator

October 24, 2008

State Historical Resources Commission
Archaeological Resources Committee
P.O. Box 942896
Sacramento, CA 94296-0001

RE: Position Papers

Dear Committee:

It is upon extensive review and great consideration that we the Smith River Rancheria, a federally recognized tribe, comment on the White Papers drafted by the Archaeological Resources Committee and the Society for California Archaeology (SCA) regarding the "Affecting Change in California Archaeology" in 2007. The Smith River Rancheria's (Tribe) position regarding the drafted comments is to consider the many aspects of archaeology and the means of which archaeology is practiced within our aboriginal territory and the state of California. The reality of *prehistoric archaeology* is that it directly influences and compromises the resources of our ancestors. The interest of the Tribe is to actively protect cultural, natural, and archaeological resources. We are the voice of these resources and it is our innate duty to preserve who we are and where we originate.

The Tribe values with high importance and great significance the process and definition of tribal consultation. Upon review, the process conducted for the purpose of these White Papers was inadequate and we are disappointed in the lack of tribal consultation and consideration for such an important issue. As previously stated, *prehistoric archaeology* is based on the study of our ancestors and such resources. This is why the lack of tribal consultation is insulting. This disrespect is a direct reflection of why we have to "Bridge the Gaps" as stated in the draft. Yet the concept of "inadequate consultation" and "Bridging the Gaps" as addressed in the draft is still seen as a problem under the "current situation" and is still found intertwined throughout the present draft as well. For example, in many of the sections tribes are listed last as a recommendation to the solution or not all. When in fact it would seem more beneficial and sustainable solution to the over all deficiencies that tribes be first and foremost considered in the field of archaeology.

It has also come to the attention of the Tribe that we have been last to be somewhat consulted regarding the White Papers draft and provide written comments. With over 105 tribes within our state, it would seem relevant that tribes be consulted first and asked to comment on such highly sensitive issues prior to another group. With only a few months' notice to add input to possible changes to

Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni
Our Heritage Is Why We Are Strong

California archaeology an extension to the comment period. This request was denied. Yet the Committee conducted an open forum at the 2007 Annual Meeting of the Society for California Archaeology (SCA). Why was there not an open forum for reach to the Native community created at the same time as this meeting? Nor was there a mention of sending drafts to the Tribal Historic Preservation Officers (THPO) when it was sent to other preservation agencies for review. This would have been the ample opportunity to incorporate tribal participation in the beginning process of the draft.

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When looking at protecting our resources and providing a means for public access it is often, the tribal nations that have accept defeat and take a back to seat to the needs of the general public. At this time, the Tribe would like to take a stance that although we respect the need for the public to have an "enriched experience" our resources are non-renewable. Once the objects are taken or the ground disturbed all integrity is lost and we are left with only the reflection of what use to be. We then have to prove why a site has meaning or significance to our people. We believe in educating the public to why we care about our resources but it is also time for the public to reciprocate the respect. We have been block, for generations, from lands that we once valued as an enriched experience and these places include but are not limited to prayer rocks, gathering and hunting places, training grounds, village sites, cemeteries, etc. Most of these lands are now privately owned or managed by other state and/or federal agencies. We have had to accept that we are no longer able to access these places. Why can't the general public do the same? We believe we can come to a mutual understanding if given a chance to discuss such issues.

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We would also like to address the California Environmental Quality Act (CEQA) and some of the short falls and deficiencies within the existing statute. We believe CEQA to be viewed as only a compliance process. We would like to see that CEQA guidelines be used as a standard practice for archaeology and that real consequences be implemented as a direct result in violating the law. It is time that Cultural Resource Management (CRM) is taken seriously and violators of such statutes be held accountable. We need to reform legislation of our resource laws to reflect accountability. In an ideal situation it could also be that the Office of Historic Preservation (OHP) has more regulatory powers to enforce laws and convict violators. CEQA can then be used for more then just a process.

E

For the Tribe, under the Archaeological Resource Conversation Section and ideal situation it needs to include that preservation of such sites is through avoidance and at a minimum proper mitigation. At no means does the Tribe condone the deliberate destruction of such sites. The Tribe is willing to work with those to help find meaningful and productive ways to mitigate when necessary. Avoidance has proven to be the most effective method in protecting and preserving our resources.

F

The Curation of Archaeological Collection and Information is a section the Tribe would like to see more tribal involvement. In an ideal situation, why can we not look at tribes as an option for housing objects found during excavation as well as inadvertent discoveries? A tribal nation is just as capable of caring for objects as any other facility. If an object is culturally affiliated to a tribe or found within their aboriginal territories who else to properly tend to the object then that of the people it descends from? We would like to see more objects curated by tribal nations.

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At this time, we are submitting this letter as a beginning to our initial comment phase and will be submitting more comments at a later date.

Thank you for your time and consideration. Should you have questions or comments please contact Suntayea Steinruck, NAGPRA/THPO Officer @ 707-487-9255 X 3180.

*Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni
Our Heritage Is Why We Are Strong*

From: Michele Fahley (mfahley@calindian.org)
To: SHRC_ARC@yahoo.com
Date: Friday, October 31, 2008 4:53:50 PM
Cc: cjmojado@slrmissionindians.org
Subject: Comment Letter



Ms. Fernandez,

Attached is a comment letter on the ARC Position Papers, submitted on behalf of the San Luis Rey Band of Mission Indians.

Thank you,

Michele Fahley
Staff Attorney
California Indian Legal Services
609 S. Escondido Blvd.
Escondido, CA 92025
(760) 746-8941, ext. 121
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CALIFORNIA INDIAN LEGAL SERVICES

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BISHOP
EUREKA

Michele Fahley, Staff Attorney
760/746-8941, Ext. 121
mfahley@calindian.org

SACRAMENTO
ESCONDIDO

October 31, 2008

VIA ELECTRONIC MAIL

Ms. Trish Fernandez, M.A., RPA. Chair
Archaeological Resources Committee
State Historical Resources Commission

Re: Comments on Position Papers

Dear Ms. Fernandez,

The San Luis Rey Band of Mission Indians hereby submits the following comments on the Archaeological Resources Committee Position Papers. The San Luis Rey Band ("Band" or "Tribe") is a San Diego County Tribe whose traditional territory includes the current cities of Vista, Oceanside, Carlsbad, San Marcos, Escondido, Fallbrook, and Bonsall, among others.

The Band is very active in protecting and preserving its vital cultural resources in the San Diego area. In fact, the Band has created a non-profit that provides tribal monitoring services, education, and outreach to local agencies and communities. The purpose of this organization and the Band's activities is to promote a better understanding of the need to protect and preserve cultural resources, as well as to help bring awareness to the issues facing the Tribe today in its efforts. Because of the Tribe's involvement in this area, issues regarding curation, conservation, interpretation, preservation, and standards and guidelines are frequently confronted by tribal members.

A

The Tribe is excited to see an effort by the State Office of Historic Preservation in engaging the tribal community in its policy changes. The Tribe also appreciates the dedication of the authors of these position papers and their time and effort in helping bring these issues forward. At the outset, it is unclear to what extent participating and input from the tribal community was sought before the drafting of these papers. While any consultation is welcome, the Band believes that consultation with tribal persons should have begun early in the process. If this was part of the initial stages, then the Band commends the Committee on its efforts, but if not, the Tribe would like to see more involvement by tribal members in the future.

B

The Committee is seeking comments on how to improve the state's policies in each of the 5 areas, and as such, the Tribe will address each paper separately.

Conservation

The Tribe appreciates the author's identification of "cultural landscapes" as an important part of cultural resource preservation. Too often, the focus is only on individual "sites" and not the larger environment in which these resources are located. Conservation must focus not only on discrete, registered sites, but also on larger areas of deep cultural, religious and sacred important to tribal peoples.

C-1

The author's suggestions are a good starting point for trying to better state policies. One recommendation is to consult with California Indians. However, it is unclear what the focus of consultation would be and in what areas. In order to provide for stronger policy changes, consultation should be better defined. For example, consultation is necessary in order to identify areas of cultural significance. Relying on recorded sites alone does not provide adequate data on "cultural landscapes." The best source of such information is the tribes themselves. In addition, consultation must be confidential. Because many of these areas are sensitive, their location and significance should not be publicly available.

C-2

Another important aspect to improving conservation strategies is to include tribal participation in state and local planning committees and other policy-making bodies. It is unclear what is meant by "cultural resource professionals" in the suggestion for involvement, but tribal persons must be included as well.

C-3

Curation

The Tribe believes that the curation of artifacts and cultural items has reached a point of saturation. In fact, when working on local projects, the Tribe often requests that such items be repatriated and when possible, re-interred near their original location. While the Tribe understands that curation is necessary for some items, the bulk of material that is discovered during data recovery has little, if any value, in the Tribe's view, for scientific research.

D-1

In speaking with other cultural resource professionals, the Tribe is sensitive to the fact that others do not share its views on this issue. However, the position paper must address tribal concerns about curation and whether, and to what extent, it is necessary. Certainly, items in "dead storage" should be returned to the tribes, or if agreeable to all interested parties, managed for public education. Ideas about scientific research are often at odds with tribal views on the subject and in order to improve state policy in this area, neither viewpoint can be ignored.

D-2

Perhaps the formation of a Curation Committee or some similar policy entity is needed for this discussion. Because the Tribe understands that curation holds different meanings and concerns for different communities, both professional and tribal, all views should have a place at the table in discussing this very important issue.

D-3

Interpretation

This paper focuses on the promotion of historic preservation through education and interpretation. However, what is lacking is any mention of involvement by the tribal people who are the focus of such interpretation. Interpretation and outreach in this area require the active involvement by the tribal communities who are the subject of historic preservation and interpretation.

E-1

Tribal participation should be included in every suggestion made by the author. One common complaint from tribal members is that the interpretation and education concerning tribal peoples is divorced from the actual subject community. In order to "bridge the gap," the native people themselves must be an integral part in interpretation and education efforts. The Band would like to see this component added to the position paper.

E-2

Archaeological Resources Protection

The best way to advance archaeological resource protection is to have more tribal members serving in staff positions and local planning agencies. Efforts should be made to recruit native persons to fill these positions, which effort could be combined with the general lobbying efforts proposed by the author. Training at the university level should also include participation by tribal people so that future generations of archaeologists have a better understanding of their impact on cultural and archaeological resources, and their affiliated communities.

F-1

The Tribe is in agreement with the author's suggestion to encourage the addition of cultural resource elements to General Plans. Some cities in the Tribe's area are already doing this and are actively seeking the Band's input.

F-2

Also, regarding SB 18 compliance, cities within San Diego County are actively avoiding consultation with affected Tribes. For example, one city is requiring the applicant, or the consultant, to consult with the Band. SB 18 contemplates a government to government consultation and some cities are ignoring that mandate. SB 18 can be a powerful tool if it is followed and utilized by local planning agencies appropriately. Efforts by the state have so far not been effective, as is evidenced by the above example.

F-3

The author suggests training on applicable state laws to local planning agencies and decision makers. The Tribe believes that this is an important aspect to better protection. However, the experience of the native people must be included in any training. Having tribal people participate can add a vital component to this educational proposal.

F-4

Archaeological Standards and Guidelines

Tribal frustration with archaeologists has long been a troubled spot in cultural resource protection. As the author correctly points out, unethical and under-qualified practitioners are all

G-1

Letter to Trish Fernandez, Chair
RE: Position Papers
October 31, 2008
Page 4 of 4

too common in this field. Because the Tribe works closely and actively with local planning agencies, and with archaeological consultants, the culture of "low-ball bidding" has been a harsh reality for cultural resource protection. In some situations, the Tribe has requested that certain archaeological firms not be hired because of negative experiences.

] 6-1

The author's suggestions for addressing this problem are welcome by the Tribe. Professional standards and a licensing scheme are a must in order to provide quality services. As standards and guidelines are created, tribal participation in those processes is vital. Historically, the involvement of the native people who are, in reality, the most affected by cultural resource destruction and mismanagement, is lacking or more often, non-existent.

] G-2

It is not clear from the author's suggestions if a committee or other body is contemplated in the development of S & G's, but if so, having tribal persons seated on that committee is vital. In addition, providing for comment periods is another important way to obtain feedback from tribal communities.

] G-3

The San Luis Rey Band appreciates the opportunity to provide comments on these position papers. The Band hopes that this is only the first step in increasing the preservation and protection of cultural resources, and we look forward to a continued dialogue in the future.

Sincerely,

CALIFORNIA INDIAN LEGAL SERVICES



Michele Fahley

Staff Attorney

Attorneys for the San Luis Rey Band

cc: Carmen Mojado, Secretary of Government Relations and President of Saving Sacred Sites

From: Michele Fahley (mfahley@calindian.org)
To: SHRC_ARC@yahoo.com
Date: Friday, October 31, 2008 12:05:18 PM
Subject: ARC Position Papers

Ms. Fernandez,

My office represents the San Luis Rey Band of Mission Indians. The Tribe is interested in submitting comments on the Position papers but was wondering if we could have an extension until Monday, November 3rd?

You may reach me at the contact information below if needed.

Thanks,

Michele Fahley
Staff Attorney
California Indian Legal Services
609 S. Escondido Blvd.
Escondido, CA 92025
(760) 746-8941, ext. 121
Fax (760) 746-1815
Email: mfahley@calindian.org

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9

From: Randall Dean (Randall.Dean@sfgov.org)
To: SHRC_ARC@yahoo.com
Date: Friday, October 31, 2008 4:21:37 PM
Cc: Mark Luellen; Mary Brown; Matt Weintraub; Moses Corrette
Subject: Comments on SHRC Archaeological Resources Committee draft Position Papers

Dear members of the Archaeological Resources Committee,

Attached is a copy of the comments of the City and County of San Francisco as a Certified Local Government on the draft Position Papers prepared by the Committee.

(See attached file: SF-CLG-Comments.pdf)

Randall Dean

Randall Dean
archeologist
Major Environmental Analysis
San Francisco Planning Department
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San Francisco, CA 94103
tel. 415.575.9029
e Randall.Dean@sfgov.org



SAN FRANCISCO PLANNING DEPARTMENT

30 October 2008

Archaeological Resources Committee
State Historical Resources Commission
State of California
1416 Ninth Street, Room 1442-7
Sacramento, CA 95314

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Dear Members of the Archaeological Resources Committee

Thank you for the opportunity to comment on the draft Position Papers on Preservation Archaeology issued by the Archaeological Resources Committee (Committee). The City and County of San Francisco as a Certified Local Government of California is supportive of the Committee's initiative in seeking to improve and standardize archeological standards and practices in the State especially for those settings outside the sphere of Federal involvement where adequate and clear guidance has long been lacking. In further encouragement of these efforts we would like to submit for your consideration the following comments on the Position Papers which are organized by topic. Thank you again for the opportunity to participate in this effort.

Archaeological Standards and Guidelines

We are very much in agreement with the description of problems and possible solutions described in the Paper. We would underscore the need for some standardized guidance for addressing archeology under CEQA, especially with respect to types of effort and documentation that should be carried out during the CEQA environmental evaluation phase (as opposed to the mitigation phase). With respect to the problem of the lack of professional qualification standards for archeologists for projects under strictly local government oversight, it would be helpful for the Position Paper to discuss in greater detail how a permit and/or licensing system could be developed. Would an archeologist permit/licensing system have to occur under the auspices of the State or through professional organizations and, in either case, what steps would be necessary to realize such a system?

A

Archaeological Resources Conservation

The discussion of archaeological conservation issues appears biased toward suburban and rural areas where open space is appreciably present and where, thus, many of the conservation strategies described (conservation easements, public agency, land trust and conservation acquisition) are feasible. We would recommend that the discussion in this paper also be balanced with a discussion of archeological resource conservation challenges and potential solutions in urban settings. The Paper's discussion of the need to employ concepts like "cultural landscape" in archeological conservation efforts is especially apt to urban archeology where appropriate archeological identification and treatment require recognition of how archeological features/sites may be historically/prehistorically or thematically interrelated and more geographically extensive

B

than otherwise assumed. We would recommend that the Committee consider the following strategies to address this problem:

- Encourage local governments in carrying out their CRM and CEQA review responsibilities to develop an archeological resource inventory framework that will identify archeological sites that are historically/prehistorically or thematically interrelated such as Spanish-Mexican mission/presidio/pueblo complexes, a specific period, industry, ethnic group (Chinese, Russian, Japanese), etc. The use of GIS is especially adept at identifying and documenting areas of shared archeological significance
- Encourage incorporation of archeological conservation districts in local zoning ordinances and General Plan Preservation Elements that can encourage and guide project redesign and codify appropriate research and treatment frameworks for archeological resources related to larger cultural landscapes.

B

Curation of Archaeological Collections and Information

The lack of appropriate curation space is one the principal problems confronting archeology in San Francisco. We would add to the recommendations of the Position Paper the following:

- Encourage the convening of a Statewide conference on the curation crisis problem raising the visibility of the problem and facilitating an important sharing of the range of needs and of potential solutions. Preservation of archeological resources in the form of data recovery would seem to logically require curation of the recovered data having long-term research value such that absence of curation would be a failure of mitigation to a less-than-significant level, in CEQA parlance. Many local agencies would assumedly appreciate the opportunity to explore alternatives in dealing with this legal and practical dilemma.
- Encourage agencies to report accessions of recovered archeological material to a central repository, such as the Information Centers. Agencies could provide electronic copies of the catalogues of accessioned collections to the central repository where such information could be easily consulted by interested researchers, CRM agencies, and Native Americans.

C



Mark Luellen
Preservation Coordinator

From: Magdalenos@aol.com (Magdalenos@aol.com)
To: hensher@mail.com; jpeidsness@yahoo.com; SHRC_ARC@YAHOO.COM
Date: Friday, October 31, 2008 3:51:44 PM
Subject: Re: FW: Schedule for review of White Papers

10

Tsnungwe Council

P.O. Box 373
Salier, CA 95563

State Historical Resource Commission
SHRC Archaeological Resources Committee
Trish Fernandez, Chair
SHRC_ARC@YAHOO.COM
P.O. Box 942896
Sacramento, CA 94296-0001

October 31, 2008
Dear Trish Fernandez:

The Tsnungwe Council strongly objects and cannot participate in the process the State Historical Resource Commission Archaeology Committee has established for input regarding the White Papers that are "essays on cultural resource problems and prospects by the State Historical Resource Commission's Archaeology Committee".

It is our recommendation that the State Historical Resource Commission Archaeology Committee begin the process again and include California's Indian tribes in the process. The current process is not appropriate for three reasons:

1. The state of California and federal government have laws that require consultation with tribes on a government-to-government basis. In fact, the white paper on standards and guidelines cites inadequate consultation with tribes as a current problem then proceeds to not consult with tribes. This was not an oversight. We were intentionally left out of the process. It is important to remedy this problem.
2. There is no tribal representation on the State Historical Resource Commission or Committee. Tribal representatives need to be added to the committee and commission.
3. Tribes were not involved in developing the White Papers or given opportunity to submit White Papers regarding these critical issues. Archaeologists who work in the field stated that fifty to ninety percent of their fieldwork is on Indian lands and involves working with tribes.

It is critical to develop archaeology standards and guidelines, curation, conservation, protection, and interpretation methods, but this process included only archaeologists. California's tribes have been excluded. This is simply unacceptable.

Sincerely,

Dena Ammon Magdaleno, Elder
Tsnungwe Council

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Tsnungwe Council

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State Historical Resource Commission
SHRC Archaeological Resources Committee
Trish Fernandez, Chair
P.O. Box 942896
Sacramento, CA 94296-0001

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Sincerely,

Dena Magdaleno

Dena Ammon Magdaleno, Elder
Tsnungwe Council

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PO Box 373
Salgar, CA 95563

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State Historical Resource Commission
SHRC Archaeological Resources Committee
Tish Fernandez, chair
PO Box 942896

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